

(2007) 12 GUJ CK 0024
In the Gujarat High Court

Case No : Civil Application - for Direction No. 1580 of 2007 in Miscellaneous Civil Application No. 909 of 2006 in Special Civil Application No. 7468 of 2005 and Miscellaneous Civil Application No. 909 of 2006 in Special Civil Application No. 7468 of 2005

Atul Vrajlal Pandya

APPELLANT

Vs

Mamlatdar Shree and Others

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 19(1), 21, 226
Gujarat Municipalities Act, 1963 — Section 146, 147, 148, 150, 152

Citation : (2007) 12 GUJ CK 0024

Hon'ble Judges : Akshay H. Mehta, J;A.S. Dave, J

Bench : Division Bench

Advocate : Ashish M. Dagli, for the Appellant; Nikhilesh J. Shah, for respondent 1, B.Y. Mankad, for respondent 2, Sunit Shah, GP for respondent 4 and Nirad D. Buch, for respondent 6, for the Respondent

Final Decision : Allowed

Judgement

A.S. Dave, J.—Rule. Service of rule is waived by Mr. Nikhilesh J Shah, learned advocate for Respondent No. 1, Mr. BY Mankad, learned advocate for respondent No. 2, Mr. Sunit Shah, Ld. GP for Respondent No. 3 & 4, Nirad D Buch, learned advocate for Respondent(s) : 6.

2. The civil application is an offshoot of writ petition being Special Civil Application No. 7468 of 2005 which came to be disposed of on 9/8/2005 by Division Bench of this Court. In the present proceedings taken up by the petitioner, after disposal of the above Special Civil Application, this Court is called upon to render a decision on illegal action of the then Chief Officer of Municipality and the Municipality itself in demolishing the pucca structure of one storey building occupied by the petitioner since 1995 upon a lease agreement entered into between the petitioner and Municipality in exercise of powers vested in Municipality under the Gujarat Municipalities Act and demolishing the same

without following any procedure of law.

3. It will be necessary to give short facts for which the controversy is raised in different proceedings after disposal of main writ petition:

3.1. Initially the petitioner approached this Court by invoking extraordinary jurisdiction under Article 226 of the Constitution of India challenging apprehended illegal action of respondent "Anjar Municipality of likely demolition of pucca structure viz., shop/cabin of the petitioner occupied by him since 1995. He was having a P.C.O., and was carrying on his small trading activities at the place leased by the Municipality itself, however, the Municipality proposed to take the action without issuance of any notice or following any procedure of law as envisaged under the Act. The above action initiated by the municipality was so imminent that a request was made for urgent circulation of the matter and notice was issued by this Court on 25/4/2005 and ad-interim relief in terms of para. 4 D was granted till 5/5/2005 and direct service of the order was permitted and in addition to that, permission to communicate the above order by fax to the concerned authority was granted and further hearing was fixed on 2/5/2005. The above order of the Court was communicated to the respondent" authority by fax on or about 17.43 hours on very same day i.e., on 25/4/2005 on phone No. 0283-6443722 and necessary affidavits were placed on the record of the case that though the order was communicated to the authority, structure namely the shop of the petitioner was demolished with the help of JCB machines on the very same day.

3.2. However, thereafter respondent "authority filed affidavit-in-reply and it was submitted by learned advocate Mr. BY Mankad for the respondent municipality that the petitioner"s premises were causing obstruction in widening of the road and, therefore, the same was removed and it was a need to evict the persons from the site but only those persons, who were causing hindrances to widening of the road and who had no right to stay on the land which belonged to the authority/Government. However, upon submission of the learned advocate for the petitioner - a shop owner that it was the only source of income and livelihood for his family, respondent" municipality be directed to provide him alternative site and the above aspect was to be decided by Anjar Area Development Authority [hereinafter referred to as "AADA"], the petitioner was directed to make representation to the above authority with regard to allotment of alternative site. Later on, a Misc Civil Application for direction being M.C.A. No. 909/2006 was filed for further direction and also for taking appropriate action against the concerned respondent "authority for not complying with the directions of the Division Bench. Inter-alia it was prayed that the respondents shall decide the representation preferred by the petitioner for alternative site and thus after joining AADA as party respondent No. 3, the matter was fixed for further hearing on 17/4/2006. Upon a request made by learned advocate appearing for municipality and AADA for taking appropriate instructions, the matter was adjourned till 2/5/2006. Upon submissions of the learned Counsels

appearing for the parties it was thought necessary to join District Collector, Kutch as party respondent and, therefore, notice was issued to newly added respondent, namely Collector, Kutch and hearing was fixed on 16/6/2006. On 2/8/2006 learned advocate appearing for AADA was not present even though Bench was specially constituted. However, a request was made by learned advocate appearing for the petitioner that he may be permitted to do his small trading activity in a movable lorry without creating any right and any obstruction to traffic. The petitioner was directed to approach the Deputy Collector so that suitable place can be earmarked for earning livelihood by the petitioner. In spite of the earlier consensus as recorded in the order dated 1/9/2006, on 15/9/2006 when the matter was heard, Mr. KJ Bhagora, Deputy Collector, who had earlier made a statement to accommodate the petitioner for movable lorry/cabin, a different stand was taken on behalf of the Collector and the Court was left with no option but to direct the Collector to remain present and matter was adjourned till 22/9/2006. On that day it was submitted on behalf of the Collector, in presence of the Chief Officer of Municipality that no proposal was sent by the Municipality suggesting the places for earmarking hawking zone, a statement was made by Mr. BY Mankad, learned advocate for Municipality that such proposal would be sent to the office of the Collector latest by 26/9/2006 and appropriate decision would be taken by the Collector on such proposal. Ld. Asstt. Government Pleader on behalf of the Collector, submitted that if the Municipality allotted suitable place for hawking zone to the hawkers, there would not be any objection on the part of the Collector and again the case was adjourned to 11/10/2006 and thereafter till 29/11/2006. Since finalization of hawkers' zone was to take sometime, the matter was adjourned to 25/1/2007.

3.3. During pendency of Misc. Civil Application, Civil Application No. 1580 of 2007 is filed by petitioner for certain directions against the Municipality, since grievances of the petitioner remained unsolved as the petitioner was not given suitable place for his small trading activity. Once-again, this Court undertook an exercise to provide at least temporary relief to the petitioner and on 9/2/2007 i.e., on returnable date of the notice on Civil Application, Mr. HK Makwana, Ld. AGP sought time for taking appropriate instructions and it was submitted that an attempt would be made to solve the problem. On 23/2/2007 when the matter came up for hearing before the specially constituted Bench, during the course of arguments following order was passed:

During the course of arguments, Mr H.K. Makwana, learned AGP submitted that it is the Municipality which was instrumental in removing the applicant from the earlier place and demolishing the structure on the ground of widening of the road, which is not widened so far. He further submitted that even if a wrong statement is made, it is the municipality which is responsible for making the said statement earlier before the Division Bench. Looking to the earlier order of the Division Bench it is clear that on the basis of the statement made by the Municipality that the petitioner was removed from the particular place in hot haste and without following any procedure only for the purpose of widening of

the road.

It is therefore appropriate to consider the request of the applicant asking the Municipality to pay appropriate compensation as nobody can misguide the Court by making a wrong statement. On the basis of the statement made by learned AGP and the learned advocate for the Municipality that the Court has passed earlier order. The Municipality is therefore called upon to pay appropriate damages/compensation in view of the stand taken before the Court earlier.

In order to consider the aforesaid aspect of giving compensation/damages to the applicant for taking a wrong stand before the Court which amounts to misleading the Court, the Municipality is permitted to have its say on the question of giving compensation. Mr Mankad, learned advocate for the Municipality submitted that he will take appropriate instructions in the matter about giving the compensation. Hence, matter is adjourned to 2.3.2007 at 2.15 PM for that purpose.

Again on 9/3/2007 the said stand of the Government was reiterated and it was stated that the Municipality was responsible for demolition. Therefore, the then Chief Officer Mr. Ketan Vanani, who was responsible for demolition of shop of the petitioner without following procedure of law, was issued notice by this Court and hearing was fixed on 16/3/2007 and upon a request of the learned advocate appearing for the above-named Chief Officer, on 26/3/2007 the matter was adjourned to 4/4/2007. Then, the matter was placed before this Division Bench as ordered by the Hon"ble the Chief Justice. On 2/8/2007 following order was passed:

In pursuance of the oral direction of this Court, Mr. Vanani, the then Chief Officer, Anjar Municipality has remained present. Mr. ND Buch, learned advocate representing Mr. Vanani seeks time to file affidavit. However, before granting time, we have heard the learned Counsels appearing for the parties. It clearly, at this stage, appears that there was no valid reason for removing the petitioner from the place where he was having his business premises. It also appears that the alternative places suggested to him are not at all suitable to enable him to do the business in the manner in which he was doing it earlier. This issue has been pending before us for almost over one and half year. In view of the same, though we propose to grant time to Mr. Vanani to file affidavit, we direct respondent - Municipality as well as the Government to permit the petitioner to install his cabin at the site of his building which has been demolished and he should not be disturbed unless there are compelling reasons to do so. Further orders in this behalf will be passed on the next date of hearing.

S. O to 24th August, 2007 at 2.15 p.m. DSP.

3.4. Thereafter, it is pertinent to note that perpetuation of injustice and inhuman treatment meted-out to the petitioner was even noticed by the Ld. Government Pleader Mr. Sunit Shah, who appeared on 28/9/2007 and it was decided that all the respondents will work out a formula for redressal of the grievance of the

petitioner and loss suffered by him so that petitioner can be adequately compensated for illegal removal of his shop and matter was adjourned to 5/10/2007. However, later on 12/10/2007 a different stand was taken by the Municipality and it backed out from its earlier assurance to resolve the dispute amicably and on 12/10/2007 the following order was passed:

Today, the matter was fixed for submission of the joint purshis by all the parties appearing before us stating therein that the problem is amicably resolved and the present applicant to be adequately compensated. However, it is rather unfortunate that today the Municipality, which is the prime culprit in this entire episode has turned around and has submitted that the land belongs to the Government and it is the responsibility of the Government to pay compensation and the Municipality is not agreeable to contribute any amount towards compensation which can be awarded to the applicant. In view of the same, we defer hearing of this case till 19/10/2007 to enable the learned advocates to assist us on legal aspects of this case, what steps can be taken against the Municipality by this Court.

Hence, S O to 19/10/2007.

However, ultimately the matter was heard upon completion of pleadings of the parties on 27/11/2007.

4. Considering the above facts and circumstances and submissions of learned Counsels appearing for the parties from time to time, it was decided to work out a modus so that petitioner can earn his livelihood for himself and his family in lawful manner. That injustice meted-out to the petitioner was emanating from unauthorized and illegal action of the then Chief Officer of the Municipality in demolishing a small shop of the petitioner under the guise of widening of "Gaurav Path" upon some instructions issued from the office of the District Collector in turn referred to the instructions of the office of the Chief Minister. It may be made clear that no written instructions/any order were ever issued to the Municipality or the Chief Officer to demolish Pucca construction of the shop owners, without following procedure of law for widening of so called "Gaurav Path". When Mr. Sunit Shah, Ld. Government Pleader rightly perceived the problem faced by petitioner, he volunteered to assist this Court on the issue of compensation to be awarded to the petitioner for the loss suffered by him at the hand of law defying and adamant authority, namely Municipality and its officers. Ld. Government Pleader had taken this Court through various pleadings and submissions including the affidavit-in-reply and rejoinder filed by the Chief officer of the Municipality, the Municipality and the District Collector at relevant point of time. It was also submitted by the Ld. Government Pleader that though the land belonged to the Government, Municipality had no authority to demolish the structure without following due procedure of law, irrespective of any instructions that may have been issued by the office of the District Collector. Mr. Sunit Shah, therefore, submitted that as laid down by the Apex Court there are number of decisions rendered on the issue of awarding compensation by the High Court and

the Supreme Court in exercise of their powers under Article 226 and Article 32 of the Constitution of India without relegating the sufferer to a lengthy and time consuming procedure of civil remedy by approaching the concerned Court.

4.1. Ld. Government Pleader relied on following authorities:

i. Rudul Sah Vs. State of Bihar and Another,

ii. Hindustan Paper Corpn. Ltd. Vs. Ananta Bhattacharjee and Others,

iii. S.P.S. Rathore Vs. State of Haryana and Others, and other such authorities and it was submitted that what should be the approach of the Court in appreciating prima-facie evidence of loss suffered by the sufferer and nature of directions to be issued to the authority. Ld. Government Pleader also submitted that while granting such relief of compensation, the Court can certainly look into the mitigating circumstances and apart from civil law remedy when apparently fundamental right of the citizen is violated by the authority in unlawful manner, such claim will be in domain of public law remedy and the Court is empowered to award compensation.

4.2. Thus, in this case, stand of the State Government is very clear that respondent - Anjar Municipality and its Chief Officer have acted arbitrarily, unreasonably and against the settled practice of law as established by various decisions of the Apex Court and this Court and against the violation of principles of natural justice. Irrespective of the stand taken by the Municipality and Chief Officer and AADA, in no uncertain terms and unequivocally it is submitted by the Ld. Government Pleader that the Municipality and its Chief Officer are responsible for demolishing the structure belonging to the petitioner and according to Ld. Government Pleader even if such occupation of the land belonging to the Government may be unlawful, proper course for the authority is to take appropriate action as envisaged under law and at least after following principles of natural justice by giving due opportunity of hearing by issuing show cause notice before taking any action of demolition. Though claim put forth by the petitioner is on higher side, it was left to the Court to award appropriate compensation and considering the nature of one storey Pucca construction of the said structure, it was thought fit that at the most the petitioner is entitled to receive Rs. 1 lakh, since the petitioner is later on permitted to place his lorry at the alternative site and he continues to do small trading even as on date, which will amount to mitigating circumstances as laid down by the Apex Court in various decisions. Therefore, according to Ld. Government Pleader, it is a fit case where this Court can exercise power under Article 226 of the Constitution of India to award appropriate, if not adequate, compensation to the petitioner.

5. Mr. BY Mankad, learned advocate appearing for Municipality has relied on the affidavit-in-reply filed by the Municipality and it was submitted that the structure was nothing but an encroachment and it was required to be removed for widening of the existing road and for which necessary instructions were received from the office of the District Collector and stand taken by the Government is

contrary to the record. Along with the reply, a communication addressed by the then Administrator of Anjar Municipality, who was also Deputy Collector, East Zone, Anjar [Kutch] to the District Collector and it was submitted that widening of Gaurav Path was completed as per the instruction of the office of the Collector and the Chief Minister of the State. According to Mr. Mankad, learned advocate for respondent, the petitioner had no legal right to continue on the land belonging to the Municipality and the Government and, therefore, no compensation can be awarded. Mr. Mankad relied on one decision reported in the case of Hira Tikkoo Vs. Union Territory, Chandigarh and Others, in support of his above submissions. Alternatively it was submitted by Mr. Mankad that alternative place as asked for, is provided to the petitioner and, therefore, no compensation can be given and further stand of the Municipality is supported by the affidavit filed by the then District Collector - Kutch on 21/2/2007 that the petitioner was occupying land in question illegally and unauthorizedly.

6. Mr. ND Buch, learned advocate appearing for the then Chief Officer Mr. Ketan Vanani relied on the affidavit filed on 2/8/2007 and it was submitted that action of the Chief Officer was in accordance with the instructions of demolition issued by the then Collector, District Kutch. However, learned advocate for the Chief Officer was not sure who was the Collector at that point of time in the District Kutch. A reliance is also placed on the affidavit dated 21/1/2007 filed by Mr. Dhananjay Trivedi, the then District Collector, Kutch and various correspondence placed along with reply filed by the Chief officer, of-course after the demolition of the structure belonging to the petitioner. In short it was submitted by the learned advocate for the Chief Officer that his role was limited, as envisaged under the Gujarat Municipalities Act and he acted upon instructions received from the higher officer, namely the Collector, Kutch. Learned advocate further relied on his additional affidavit filed by him on 7/9/2007 about work executed by him for widening of the road [Gaurav Path] and expenses incurred for the same. He further placed reliance on the averments made by one Mr. Trilock N Shastri, the Chief Officer of Anjar Municipality in his affidavit dated 8/3/2007 that the petitioner was encroacher and the structure was unauthorized and illegal and demolition work was undertaken by the Chief officer under instruction of Mr. KJ Bhagora, Deputy Collector and Administrator of Anjar Municipality accompanied by Mamlatdar and other such officers. Therefore, according to him, no liability can be fastened upon the Chief Officer of Municipality with regard to compensation, since according to him, he had performed lawful duties.

6.1. The learned advocate for AADA Mr. NJ Shah has more or less, remained non-committal stating that AADA is not concerned with this episode.

7. Having considered the submissions of the learned advocates appearing for the respective parties including the valuable assistance rendered by the Ld. Government Pleader Mr. Sunit Shah and on perusal of the record, it transpires that the petitioner was permitted to construct one storey pucca shop upon a land given on lease by the Municipality at the place near Anjar Devaliya Naka, Octroi

Post, which admeasured 15 x 10 ft. For the construction of the above shop the Municipality has granted necessary permission as per the plan submitted by the petitioner and regular yearly assessment towards property tax and education cess was recovered. However, with regard to certain disputes initially in the year 1997, Regular Civil Suit was filed in the Court of the Ld. Civil Judge [S.D.] at Anjar, which was subsequently withdrawn since the petitioner had preferred Special Civil Application No. 1134/2002 before this Court, where initially stay was granted on 25/1/2002 and later on, unfortunately for non-removal of office objections, regarding not supplying second set till 26/9/2003, which was the last date of removal of office objections, the petition stood dismissed. Thus, the case was not decided on merits at that point of time. However, when the respondent - Municipality decided to demolish the pucca structure of the petitioner, which was only source of livelihood, the petition being Special Civil Application No. 7468 of 2005 came to be filed.

8. A careful perusal of the record indicates that before demolishing the structure belonging to the petitioner as permitted to be constructed by the Municipality in accordance with the provisions of the Gujarat Municipalities Act and Rules made thereunder, no show cause notice or opportunity of hearing was ever given to the petitioner. All the affidavits filed by the then Chief Officer and the Municipality only reveal that as per the instructions received from the office of the Hon'ble Chief Minister by the office of the Collector, the Municipality and the then Administrator of the Municipality were directed by the Collector to take suitable action to beautify Gaurav Path by removing the encroachment. Thus, it is clear that while branding the petitioner as encroacher and in illegal possession of the land in question, no procedure of law for eviction was ever followed. Not only that but even the requirement of issuance of show cause notice and hearing the petitioner as required to be observed by the authority, being a part of rule of law and principle of natural justice, was never followed. It cannot be gainsaid that municipal authority is a "State" within the meaning of Article 12 of the Constitution of India and every action of such authority is to be tested on the touchstone of the Article 14 of the Constitution of India and executive action of the Municipality has to be just, fair, reasonable and non-arbitrary. It is also to be borne in mind that the pucca shop constructed by the petitioner was the only source of livelihood of the petitioner and his family as guaranteed under Article 21 of the Constitution of India and to carry on his small trading activity as further guaranteed by Article 19(1)(g) of the Constitution of India. In the above circumstances even if case of the authority is taken to be as it is and the petitioner was continued to hold possession of the land in question beyond the period of lease, then also the Municipality was duty bound to exercise power after following basic norms and principles of principle of natural justice. The defence canvassed by the learned advocates appearing for the Chief Officer and the Municipality that powers conferred on the Chief Officer u/s 49 of the Gujarat Municipalities Act, 1963 is subject to the control, direction and supervision of the President and the Chief Officer may supervise the finance and executive

administration of the Municipality and perform such duties and such powers as may be imposed or conferred upon or delegated to him by or under the Act. In view of the above, if Chief Officer performs his duties without there being any written instruction/order of the Collector or the State Government and in his over-enthusiasm demolish and raze the structure to the ground depriving the citizen of his only source of livelihood, cannot be countenanced by this Court, particularly when Mr. KJ Bhagora, Deputy Collector/ Administrator of Anjar Municipality clearly mentioned that Municipality was not given any authority to demolish the structure. Therefore, stand taken by Mr. Sunit Shah, Ld. Government Pleader on behalf of the Collector and the State Government that officer of the Municipality has acted beyond the power and proper compensation to be given to the petitioner by considering various mitigating circumstances, viz., alternative place given to the petitioner initially and thereafter as per the direction of this Court permitting him to carry on his trading activity at the place where initially pucca structure constructed by him was standing, on certain undertaking furnished by the petitioner.

8.1. It is to be noted that when the order of stay granted by this Court on 25/4/2005 was conveyed to the authority on or about 17.43 hours, still the then Chief Officer, Mamlatdar, representative of AADA continued demolition work and did not stop their illegal activities. It is also to be noted that after demolishing pucca shop of the petitioner, no other structure on the same straight line of the road was demolished and till today no further action is taken. The width of the road has also remained the same as it was on the date of demolition. This may lead to even a conclusion that the petitioner was targeted, since the petitioner had initiated litigation against the authorities to protect his possession. Even letter addressed by AADA dated 18/8/2007 at page 169 revealed that no proposal was forwarded by AADA to widen the road from Vaishali Cinema to Tower. The reliance placed on the Government Resolution dated 6/6/2003 at page 45 of the compilation of allotment of waste land belonging to the Government/Municipality is of no relevance and direction issued by the Division Bench of this Court restraining the Government, Municipal Corporation and the Municipalities and public authorities from alienating public properties to the encroachers never envisaged or permitted the authority concerned from following procedure in accordance with law before removing illegal structure. The above directions were only for restraining the authorities from alienating public properties to the encroachers. Thus, it is clear that no-where from the record it appears that any lawful action was initiated by the authority before removing the structure belonging to the petitioner reducing him to penury. By order dated 15/9/2006 passed in Misc. Civil Application No. 909 of 2006 the petitioner was offered alternative place upon certain undertaking that on availability of the proper site in the hawker's zone, the petitioner will be given a place to carry out his trading activity. In view of the above, at this stage we have found that the action of the authority was highhanded and absolutely illegal and this Court was misled to believe that the structure was to be demolished for widening the road,

which in fact never took place and, therefore, considering the submissions of Ld. Government Pleader Mr. Sunit Shah, we have to address ourselves to provide appropriate relief to the petitioner.

9. We have given our thoughtful consideration to the rival claims and particularly whether in exercise of power under Article 226 of the Constitution of India can we direct the authorities to compensate the petitioner for loss suffered by him towards illegal demolition of his pucca structure constructed by him after obtaining permission from the respondent - Municipality and also for loss towards earning livelihood. Public law remedy for the purpose of grant of compensation is limited and can be resorted to only when the fundamental right of a citizen under Article 21 of the Constitution of India is violated and in normal circumstances a victim is to be relegated to appropriate civil Court for establishing his claim by adducing proper evidence in support of his claim. In this case, the petitioner, a small shop keeper, was deprived of his right to livelihood by illegal demolition of the structure and the above action on the part of the respondent - Municipality and its officer is contrary to the provisions of the Gujarat Municipalities Act, 1963 [for short "the Act"].

9.1. Section 65 of the Act empowers Municipality to sell, lease and contract. Section 80 empowers Municipality to acquire and hold property for the purposes of the Act. In Chapter XI of the above Act, u/s 146 powers are given to the municipal authorities regarding public street. Section 147 provides for power to require repair etc., of private streets. Section 148 is about power to declare any street a public street and Section 149 is about new private streets. It is pertinent to note that Section 150 is about regular line of a public street and Section 152 is about setting forward to regular line of street and other powers with regard to removal, etc., of obstructions on a regular line of a public street. Such powers are to be exercised by following procedure of law and for clearing obstructions on Gaurav Path was also about widening the road and adjoining public streets. The Chief Officer of Municipality is empowered to perform the duties as mentioned in Section 49 which is of executive in nature and that too in the manner as provided under the Act and not otherwise. From the perusal of the entire record, as stated earlier, no notice of hearing or show cause was given to the petitioner before removing pucca structure on the above road. No objections were invited as per Section 150(a)(b) of the Act. Thus, no other material is necessary to be examined in support of the claim of the compensation to be paid to the petitioner as this Court was misled by the Municipality to believe that structure was required for widening public street and after removing the structure of the petitioner, no other structure was removed.

10. Mr. AM Dagli, learned advocate for the petitioner has put forth a claim for compensation of Rs. 5 lakh by stating the price of the land, cost of construction and the materials destroyed by removal of super-structure. Mr. Sunit Shah, Ld. GP has submitted that the above claim is required to be mitigated in view of the fact that the petitioner was provided alternative place and is carrying out his

small trading activity and earning livelihood. Therefore, after considering overall facts and circumstances, this Court is of the opinion that the land originally belonged to the Government for which the petitioner cannot be awarded any compensation under the above head. However, the pucca structure constructed by the petitioner could have been removed after following procedure contemplated under the Act by the Municipality and not in hot haste as is done in the present case by it and that too by misleading the Court. So far as the materials lying in the shop and cost thereof and loss to the petitioner towards earning for himself and his family members and cost of litigation incurred by him are concerned, we deem it just and proper to assess the loss to the tune of Rs. 1 lakh [Rupees one lakh only] and hold all the respondents vicariously liable and responsible to pay the same and direct the respondent authorities including the Government, being the parent authority of all local authorities, to pay the amount of Rs. 1 lakh to the petitioner within eight weeks from the date of receipt of writ/order of this Court. The above amount of compensation will have to be equally divided amongst the respondents and each respondent will have to pay 1/6th share towards Rs. 1 lakh to be paid to the petitioner in all for compensation.

10.1. So far as the alternative place given to the petitioner is concerned, the petitioner will be entitled to continue his small trading activity in its present form without adding or altering any structure which is of a temporary nature and when a place is allotted in a hawking zone earmarked by the Municipality and approved by the authority, the petitioner shall have to shift at such place without any objection. As and when such hawking zone is declared and approved, the petitioner will be given reasonable time by the respondent authority to shift his belongings.

With the aforesaid observations and directions, civil application is allowed. Rule is made absolute to the aforesaid extent.

In view of the order passed in civil application, no order on any other pending matter with regard to the subject matter before this Court. Rule discharged.